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Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice

Report of the Secretary-General

I. Introduction

1. The General Assembly, in section IV, paragraph 3, of its resolution 50/216 of 23 December 1995, requested the Secretary-General to address the issues raised by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) concerning the conditions of service of members of the International Court of Justice (ICJ) in the context of the next review, at the fifty-third session of the General Assembly, in the light of the recommendation contained in the report of the Advisory Committee.[1]

2. In order to facilitate consideration of the various issues regarding the compensation and conditions of service of members of the Court, the present report is divided into the following sections: remuneration, including adjustment for currency fluctuation and cost of living; other conditions of service; pensions; analysis of the practice of the Court with respect to Article 16, paragraph 1, of the Statute of the Court; residence and non-residence status of the members of the Court; financial implications; and the next comprehensive review.

II. Remuneration

3. Article 32 of the Statute of ICJ provides, *inter alia*, that each member of the Court shall receive an annual salary (para. 1), that these salaries and allowances "shall be fixed by the General Assembly" and that "they may not be decreased during the term of office" (para. 5).

4. Since 1976, the General Assembly has conducted periodic reviews of the emoluments of the members of the Court, with the last comprehensive review having been undertaken at the fiftieth session of the General Assembly (see A/C.5/50/18). By paragraph 1 of its resolution 45/250 A of 21 December 1990, the General Assembly decided that, with effect from 1 January 1991, the annual salary of the members of ICJ would be US$ 145,000. By paragraph 2 of its resolution 48/252 A of 26 May 1994, the Assembly maintained the annual salary of the members of ICJ at $145,000. On the occasion of the comprehensive review of the emoluments of the members of the Court undertaken in 1995, the Assembly, by paragraph 2 of part IV of its resolution 50/216, agreed with ACABQ's recommendation to maintain the salary of the members of the Court at $145,000 per annum.

5. The emoluments of the members of the Court are sui generis. However, on the occasion of the periodic

98-29409 (E) 191098

comprehensive reviews of the emoluments and conditions of service of the members of the Court, information on the net remuneration of senior Secretariat officials, of the Chairman of the Advisory Committee on Administrative and Budgetary Questions, of the Chairman and Vice-Chairman of the International Civil Service Commission (ICSC) and of the members of the Joint Inspection Unit (JIU) as well as the gross emoluments of the president and members of the highest courts in national judiciaries of a number of States and of international courts have been provided as reference points for purposes of comparative assessment.

6. Tables 1 and 2 contain updated information concerning the evolution of emoluments from January 1995 to June 1998. Table 1 compares the movement of the judges' total emoluments with changes in the remuneration of senior Secretariat officials and that of full-time members of other subsidiary bodies of the United Nations; Table 2 provides information obtained, with the assistance of permanent missions to the United Nations, on the movement of gross emoluments of the president and members of the highest courts in a number of national judiciaries. The table also presents information on the movement in emoluments of the President and members of the Court of the European Communities in Luxembourg and of the Iran-United States Claims Tribunal in The Hague, as well as the emoluments of the President and members of the European Court of Human Rights in Strasbourg which, as of the last quarter of 1998, will be transformed into a full-time court.

Table 1

Changes in net remuneration of members of the Court, Secretariat officials and members of United Nations bodies, 1995–1998

(In United States dollars, dependency rate)

	January 1995	*January 1996*	*January 1997*	*January 1998*	*June 1998*
International Court of Justice					
President[a]	160 000	160 000	160 000	160 000	160 000
Index	100.0	100.0	100.0	100.0	100.0
Members of the Court	145 000	145 000	145 000	145 000	145 000
Index	100.0	100.0	100.0	100.0	100.0
Senior Secretariat officials					
The Hague					
ASG[b] (dep. rate)	121 098	140 383	134 558	119 022	122 993
Index (dep. rate)	100.0	115.9	111.1	98.2	101.5
ASG[b] (single rate)	109 851	127 265	122 091	108 027	111 656
Index (single rate)	100.0	115.9	111.1	98.3	101.6
Geneva					
USG[c]	173 461	198 406	172 995	161 207	159 238
Index	100.0	114.4	99.7	92.9	91.8
ASG[b]	158 427	181 306	157 999	147 187	145 380
Index	100.0	114.4	99.7	92.9	91.8
New York					
USG[c]	132 942	141 322	147 041	149 617	149 637
Index	100.0	106.3	110.6	112.5	112.6
ASG[b]	121 263	128 949	134 195	136 557	136 575
Index	100.0	106.3	110.7	112.6	112.6

	January 1995	January 1996	January 1997	January 1998	June 1998
Full-time members of subsidiary bodies					
Chairman, ICSC/ ACABQ[d]	128 776	137 230	137 230	143 692	143 692
Index	100.0	106.6	106.6	111.6	111.6
Vice-Chairman, ICSC	120 776	129 230	129 230	135 692	135 692
Index	100.0	107.0	107.0	112.4	112.4
Members of JIU, Geneva	137 678	157 943	137 299	127 722	126 122
Index	100.00	114.7	99.7	92.8	91.6

[a] Includes special allowance of $15,000.
[b] Includes representation allowance of $3,000 a year.
[c] Includes representation allowance of $4,000 a year.
[d] Includes special allowance of $8,000 a year.

Table 2

Movement in gross emoluments of officers of national judiciaries, the Court of the European Communities and the Iran-United States Claims Tribunal 1995–1998

	1995	1996	1997	1998
1. United States Supreme Court				
Chief Justice (US$)	171 500	171 500	171 500	175 400
Index	100.0	100.0	100.0	102.3
Associate Justice (US$)	164 100	164 100	164 100	167 900
Index	100.0	100.0	100.0	102.3
2. Supreme Court of Canada				
Chief Justice (Can$)[a b]	199 900	199 900	204 000	208 200[d]
(US$)	142 786	146 985	152 239	147 660
Index	100.0	102.9	106.6	103.4
Puisne judge (Can$)[b c]	185 200	185 200	189 000	192 900[d]
(US$)	132 286	136 176	141 045	136 809
Index	100.0	102.9	106.6	103.4
3. United Kingdom				
Lord Chief Justice (£ stg.)	118 179	124 138	132 178	140 006
(US$)	184 655	190 982	222 522	233 347
Index	100.0	103.4	120.5	126.4
Master of the Rolls (£ stg.)	109 435	114 874	122 231	131 034
(US$)	170 992	176 729	205 776	218 390
Index	100.0	103.4	120.3	127.7
4. Australia				
Chief Justice ($A)[e]	211 871	—	—	253 348
(US$)	164 241	—	—	165 587
Index	100.0	—	—	100.8

	1995	1996	1997	1998
Justice				
($A)[e]	192 604	—	—	230 309
(US$)	149 305	—	—	150 529
Index	100.0	—	—	100.8
5. Japan				
Chief Justice				
(¥)	44 268 943	44 665 263	44 883 240	44 883 240
(US$)	444 021	437 895	387 593	345 256
Index	100.0	98.6	87.3	77.8
Associate Judge				
(¥)	32 300 080	32 597 320	32 755 847	32 755 847
(US$)	323 972	319 582	282 866	251 968
Index	100.0	98.6	87.3	77.8
6. Court of the European Communities				
President				
(Bf)[f]	8 679 311	8 774 796	8 897 622	9 093 361
(US$)	271 228	297 451	278 051	246 433
Index	100.0	109.7	102.5	90.9
Member				
(BF)	7 075 526	7 153 367	7 253 496	7 413 066
(US$)	221 110	242 487	226 672	200 896
Index	100.0	109.7	102.5	90.9
7. European Court of Human Rights				
President				
(FF)[g]	—	—	—	1 100 000
(US$)[h]	—	—	—	193 000
Index	—	—	—	100.0
Member				
(FF)[i]	—	—	—	1 100 000
(US$)[h]	—	—	—	193 000
Index	—	—	—	100.0
8. Iran-United States Claims Tribunal				
President (US$)	245 000	—	—	252 000
Index	100.0	—	—	102.9
United States-Iranian Judge		—	—	
(US$)	210 000	—	—	217 500
Index	100.0	—	—	103.6
Third-country judge (US$)	235 000	—	—	242 500
Index	100.0	—	—	103.2

[a] Also entitled to a representation allowance of Can$ 10,000.
[b] Also entitled to an incidental allowance of Can$ 2,500.
[c] Also entitled to a representation allowance of Can$ 5,000.
[d] Salary effective as from 1 April 1998.
[e] Also entitled to an annual allowance of $A 20,000.
[f] Also entitled to a residential allowance of BF 70,661.
[g] Salary will become effective 1 November 1998. Also entitled to annual additional remuneration of FF 75,000, paid on *pro rata temporis* basis.
[h] Estimated United States dollar amount derived using exchange rate of FF 5.7 to US$ 1.00.
[i] Salary will become effective 1 November 1998. Also entitled to annual additional remuneration of FF 37,500, paid on *pro rata temporis* basis.

7. In April 1987, ICSC introduced the concept of a local currency floor and ceiling at a number of duty stations, including The Hague, to protect staff against the weakening of the dollar. The background and the functioning of the floor/ceiling system, as applied to the emoluments of the members of the Court, are discussed in paragraphs 11 to 15 of the Secretary-General's report to the General Assembly at its forty-eighth session (A/C.5/48/66).

8. In paragraph 4 of its resolution 48/252 A, the General Assembly decided to continue the system of floor/ceiling measures introduced for members of the Court pursuant to section VI of General Assembly resolution 43/217. In paragraph 8 of his report to the General Assembly, at its fiftieth session (A/C.5/50/18), the Secretary-General indicated that the 1994 floor/ceiling exchange rates had been derived by applying the previous formula of 4 per cent above and 4 per cent below the average exchange rate to the year 1993. The average exchange rate in 1994 was 1.82 guilders to the dollar and yielded revised floor/ceiling exchange rates of 1.75 and 1.89 guilders, respectively. The floor exchange rate of 1.75 guilders to the dollar resulted in a revised currency floor of 21,145 guilders per month and the ceiling exchange rate of 1.89 guilders to the dollar resulted in a revised currency ceiling of 22,837 guilders per month.

9. In paragraph 12 of the same report, the Secretary-General expressed the opinion that the annual emoluments of members of the Court should be maintained at their current level of $145,000. He also noted that the mechanism used to regulate emoluments against the weakening/strengthening of the dollar had provided only limited protection for the judges over the period since the beginning of 1994. Although he proposed that the same mechanism continue to be applied, he drew the attention of ACABQ to the serious diminution in the real level of emoluments as a result of the use of the United States dollar as a reference currency. He inferred that action could be taken to restore the real 1991 value of those emoluments, in line with the spirit of Article 32 of the Statute of the Court.

10. In paragraph 6 of its report,[1] the Advisory Committee expressed its agreement with the Secretary-General's opinion that the annual emoluments of the members of the Court should be maintained at the current level of $145,000 and recommended that, "should the current mechanism used to regulate emoluments against the weakening/strengthening of the dollar be considered inadequate, the Secretary-General [should] make proposals in this regard, bearing in mind the various studies that have been carried out on this issue in the recent past."

11. In 1996, the Advisory Committee was advised that it had been found reasonable to continue to apply through 1996 the floor/ceiling mechanism that had been applied in 1995 in the light of the provisions of Article 32 of the Statute of the Court, which specify that the remuneration and allowances of the members of the Court "shall be fixed by the General Assembly, and may not be decreased during the term of office", and pending the next review of the conditions of service for the members of the Court.

12. Consequently, floor/ceiling exchange rates of 1.75 and 1.89 guilders, respectively, applied in 1995 for the purpose of effecting monthly payments in guilders to the members of the Court, were applied in 1996 and 1997.

13. The Advisory Committee was further advised that the movement in the exchange rate of the guilder to the dollar would continue to be monitored. If any significant strengthening of the dollar were to be noted vis-à-vis the guilder and if it was found that a revision in the floor/ceiling exchange rates was needed, the Committee would be informed accordingly.

14. The dollar strengthened significantly during 1997. In this light, for the year 1998, it was found reasonable to revise the floor/ceiling rates used for effecting monthly payments in guilders to the members of the Court. Based on the methodology proposed by the Secretary-General and, as recommended by ACABQ and approved by the General Assembly, the floor/ceiling rates were set at 4 per cent below and 4 per cent above the average exchange rate of the previous year. For the year 1997, the average exchange rate is 1.94 guilders to $1.00. On this basis, the floor/ceiling exchange rates were revised to 1.86 and 2.02 guilders, respectively. The floor exchange rate of 1.86 guilders to the dollar results in a currency floor of 22,474 guilders per month and the ceiling exchange rate of 2.02 guilders to the dollar results in a currency ceiling of 24,408 guilders per month.

15. Table 3 indicates the official exchange rate for the guilder against the dollar for the period from January 1994 to September 1998. Over the period, the floor amount has been payable for 26 months and the ceiling amount for 17 months.

Table 3
Exchange rate of the guilder to the dollar, January 1994–September 1998

	1994	*1995*	*1996*	*1997*	*1998*
January	1.92	1.74	1.61	1.75	2.02
February	1.95	1.70	1.67	1.85	2.06
March	1.92	1.64	1.63	1.90	2.02
April	1.88	1.57	1.65	1.89	2.08
May	1.88	1.54	1.70	1.95	2.02
June	1.85	1.54	1.71	1.91	2.00
July	1.78	1.56	1.71	1.94	2.04
August	1.76	1.56	1.67	2.07	2.04
September	1.74	1.65	1.67	2.02	2.03
October	1.76	1.59	1.71	2.02	
November	1.69	1.57	1.71	1.94	
December	1.75	1.61	1.72	1.99	

16. The floor/ceiling mechanism used to regulate emoluments against the weakening/strengthening of the dollar has served to limit the diminution of the emoluments of the members of ICJ expressed in guilders, particularly in 1995 and 1996, when the dollar weakened against the guilder, as well as restricting the increase in the judges' emoluments in 1997 and 1998, when the dollar strengthened against the guilder. Overall, the floor/ceiling mechanism has served to offset fluctuations in the value of the dollar against the guilder. Nevertheless, as a result of the increase in the cost of living in the Netherlands, the emoluments of the members of ICJ have experienced a diminution in real value since 1991. According to official statistics of the Netherlands provided by the Court, the consumer price index for the Netherlands for the period from 1 January 1990 to 31 December 1997 increased by 19 per cent.

17. The Court has noted that, if the emoluments of the members of the Court had been adjusted every year in relation to the consumer price index, the total sum of these emoluments would, over the period from 1 January 1990 to 31 December 1997, have reached a level of $1,101,275, or $157,325 per year. A comparison of the latter amount with the annual salary of $145,000 shows a difference, i.e, a loss, of $12,325 per year. When compared to the real value of the emoluments, while taking into account the floor/ceiling mechanism for the conversion of salary from United States dollars into guilders, the value of the annual salary over the seven-year period would show a difference of $1,035,125, or an annual salary of $147,732. On this basis it can be seen that, while the floor/ceiling mechanism provided a certain amount of protection in maintaining the value of the level of annual remuneration, it failed to keep pace with the increase in the cost of living in the Netherlands. The total loss in remuneration over the seven-year period was $66,150 or, on average, $9,450 per year.

18. In its earlier report on the subject,[2] the Advisory Committee had expressed its view that under the existing system of adjustment for currency fluctuations and cost of living, the strengthening of the United States dollar vis-à-vis the guilder had more than offset the increases in the local cost of living. While this may have been the case in some years, it has not been so in other years, and is not so currently. It is a fact that, over time, the cost of living in the Netherlands has continued to increase cumulatively. As at 1 January 1994, the rise in the cost of living in the Netherlands, compared to 1 January 1991, was 8.7 per cent. As at 1 January 1998, the cost of living in the Netherlands had increased by 19 per cent. Even when taking into account the floor/ceiling mechanism, the loss in purchasing power has been considerable. As at 1 January 1991, the floor/ceiling exchange rates were 1.77 and 1.91, respectively. With effect from 1 January 1998, the floor/ceiling exchange rates are 1.86 and 2.02, respectively. There has been a 5.4 per cent increase in the floor/ceiling exchange rates. In real terms, the loss in purchasing power between 1 January 1991 and 1 January 1998 was 13.57 per cent (18.97% – 5.4% = 13.57%). The members of the Court have made representations to the effect that, in order to restore the real level of the emoluments of the members of ICJ, the annual salary should be increased by $19,500, from $145,000 to $164,500, i.e., by 13.4 per cent.

19. Paragraph 5 of Article 32 of the Statute of the Court provides, *inter alia*, that the salaries of the members of the Court "may not be decreased during the term of office". Based on the above information and, in line with the spirit of Article 32 of the Statute of the Court, it would seem reasonable that measures should be taken to restore the purchasing power of the emoluments of the judges. In this regard, it is also noted that no retroactive adjustment is proposed to be made to the salaries of members of ICJ to offset fluctuations in the value of the United States dollar against the guilder. Consequently, it is recommended that action be taken to increase the level of annual remuneration of the members of the Court from the current level of $145,000 to $164,500. It is also noted that the mechanism used to regulate emoluments against the weakening/strengthening of the dollar has provided a measure of protection against the erosion in the level of salary of the judges. Therefore, it is also proposed that the

same floor/ceiling mechanism continue to be applied to the emoluments of the judges.

III. Other conditions of service

20. The background of other conditions of service of the members of ICJ is provided in the report of the Secretary-General to the General Assembly at its forty-eighth session (A/C.5/48/66), i.e., in section IV (paras. 16-21), concerning the special allowances of the President and of the Vice-President when acting as President; section V (in paras. 22 and 23), relating to compensation of ad hoc judges; and in section VI (paras. 24-31), pertaining to the costs of educating children.

21. Article 32 of the Statute of the Court provides that the President shall receive a special annual allowance (paragraph 2) and that the Vice-President shall receive a special allowance for each day on which he acts as President (paragraph 3). As is the case with remuneration, these allowances "shall be fixed by the General Assembly" and "may not be decreased during the term of office" (paragraph 5). General Assembly resolution 31/204 provides that the allowances "shall be reviewed concurrently with the periodic review of their annual salary" (paragraph 3).

22. The General Assembly, by its resolution 50/216, part IV, paragraph 2, decided that the President's special allowance should remain at $15,000 a year and that the special daily allowance paid to the Vice-President when acting as President should remain at $94 per day, subject to a maximum of $9,400 per year.

23. Accordingly, the Secretary-General recommends no change in the current level of the special allowances of the President of the Court and the Vice-President when acting as President.

24. Turning to the issue of compensation of ad hoc judges, under Article 31 of the Statute of the Court, persons whom parties to cases before the Court choose to "take part in the decision on terms of complete equality with their colleagues" (para. 6) are known as ad hoc judges. Further to Article 32, paragraph 4, of the Statute, they "shall receive compensation for each day on which they exercise their functions". The historical background to the determination of the amount of that compensation was presented in the report of the Secretary-General to the General Assembly at its fortieth session (A/C.5/40/32, paras. 35-41).

25. The General Assembly, in paragraph 3 of its resolution 48/252 A, decided that, with effect from 1 January 1994, the ad hoc judges referred to in Article 31 of the ICJ Statute should receive for each day they exercise their functions, one three-hundred-and-sixty-fifth of the annual salary payable at the time to a member of the Court. On the occasion of the 1995 review, the Secretary-General proposed that no change be made in these arrangements. The General Assembly, by part IV, paragraph 2, of its resolution 50/216, concurred with this proposal. On this occasion, the Secretary-General proposes that no change be effected in these arrangements.

26. The background to the issue of costs of educating children, as applied to the members of the Court, is provided in paragraphs 24 through 29 of document A/C.5/48/66. By paragraphs 1 and 2 of its resolution 48/252 C of 26 May 1994, the General Assembly decided that, with effect from 1 January 1994, the President and the members of the International Court of Justice who had taken up residence at The Hague should be reimbursed, up to a ceiling of $9,750, for the actual cost of educating their children, and $13,000 for the actual cost of educating their disabled children, in respect of each child each year up to the award of the first recognized degree and that provision should be made for one related return journey per year in respect of each child from the place of scholastic attendance, when outside the Netherlands, and The Hague.

27. In his report to the General Assembly at its fiftieth session, the Secretary-General proposed that, further to resolution 45/250 C, the increase in the level of the education grant (including that for disabled children) applicable to staff in the Professional and higher categories approved by the General Assembly in resolution 49/223 should be extended, under the same conditions, to the members of the Court, as from the school year in progress on 1 January 1995 (A/C.5/50/18, para. 21). In paragraph 8 of its report,[3] ACABQ agreed with the proposal of the Secretary-General, on the understanding that this benefit would be extended only to the members of the Court who had taken up residence at The Hague. The General Assembly, in part IV, paragraph 2, of its resolution 50/216, concurred with the recommendation of the Advisory Committee.

28. Subsequent to the 1996 review of the level of the education grant by the International Civil Service Commission, the General Assembly, by part IV of its resolution 51/216 of 18 December 1996, approved the increases in the maximum reimbursement levels in seven currency areas, as well as other adjustments to the management of the reimbursement of expenses under the education grant, recommended by ICSC in its report to the Assembly at its fifty-first session[4] (see table 4).

Table 4
Education grant

Currency	*Maximum admissible educational expenses (local currency)*[a]	*Maximum grant (local currency)*	*Ceiling for boarding costs (local currency)*
Swiss franc	22 107	16 680	4 913
Italian lira	20 790 000	15 592 500	4 620 000
Norwegian krone	71 632	53 724	15 918
Netherlands guilder	28 836	21 627	6 408
Pound sterling	12 375	9 281	2 750
Swedish krona	91 575	68 681	20 350
United States dollar	18 675	14 006	4 166

[a] The amount of the special education grant for each disabled child is equal to 100 per cent of the revised amount of maximum admissible educational expenses for the regular education grant. In areas where education-related expenses are reimbursed in other currencies, the amounts remained unchanged.

29. The Secretary-General recalls that, in accordance with the recommendation of the Advisory Committee in its seventh report to the General Assembly at its forty-eighth session,[5] the next review of the costs of educating children of the members of ICJ will be conducted at the time of the next comprehensive review of conditions of service.

30. The Secretary-General would propose that, further to General Assembly resolution 45/250 C of 21 December 1990, the increase in the level of education grant (including that for disabled children) effective 1 January 1997, applicable to staff in the Professional and higher categories approved by the Assembly in part IV of resolution 51/216 of 18 December 1996, should be extended, under the same conditions, to the members of the Court, as from the school year in progress on 1 January 1998. The programme budget implications of the proposed change are discussed in paragraph 60 below.

31. ICSC has made recommendations to the General Assembly to update the current levels of the education grant. It is expected that a decision thereon will be taken by the Assembly at its fifty-third session. Any increase decided upon by the Assembly in the level of the grant or changes in the provisions regarding disabled children should be extended to the members of the Court.

32. No change is proposed with regard to other conditions of service of the members of the International Court of Justice.

IV. Pensions

33. The members of ICJ are entitled to retirement pensions in accordance with Article 32, paragraph 7, of the Statute of the Court, the specific conditions of which are governed by regulations adopted by the General Assembly. The General Assembly, in paragraph 1 of its resolution 48/252 B of 26 May 1994, invited the Secretary-General to undertake a study of the pension scheme for the members of ICJ and to report thereon to the Assembly at its forty-ninth session.

34. A review of the pension benefits and the corollary aspects of the current pension scheme were presented in the report of the Secretary-General to the forty-eighth and forty-ninth sessions of the Assembly (A/C.5/48/66, paras. 32-41 and A/C.5/49/8, paras. 6-16). In reviewing the latter report, the Advisory Committee reiterated its 1994 recommendation that it was not necessary to recommend a change in the pension benefits of the members of the Court. The Advisory Committee expressed its view that the request by the General Assembly for a study of the pension scheme for the members of the International Court of Justice had not been fully addressed. It recommended that the Secretary-General include a comprehensive review of the pension scheme for the members of the Court in his report to be submitted to the General Assembly at its fiftieth session. The report should include, on the advice of qualified actuaries, a review of benefit provisions, including those of retirement age, minimum period of service, rate of accumulation of pension benefits, early retirement benefits, contributory participation, cost-of-living adjustments and retroactive rights of pensioners.[6]

35. Pursuant to the request of the Advisory Committee, the Secretary-General sought the advice of a consulting actuary on the pension scheme of the members of ICJ. The text of the comprehensive actuarial review conducted by the consultant is contained in the annex to the Secretary-General's report (A/C.5/50/18) to the fiftieth session of the General Assembly. Based on the findings of the consultant's report, the Secretary-General concluded that the review corroborated most of the recommendations he had presented to the General Assembly at its forty-eighth session (A/C.5/48/66 paras. 32-41). On that basis, the Secretary-General recommended that:

(a) The pensionable remuneration of a judge should be defined as being equal to half the annual salary;

(b) The pension should constitute the pensionable remuneration of a judge who completes a nine-year term, with a proportional reduction for a judge who has not completed a full term. A judge who is re-elected should receive 1/300th of his pension benefit for each further month of service, up to a maximum pension of two thirds of annual salary;

(c) The pension scheme should remain non-contributory;

(d) An actuarial reduction factor at a rate of one half of one per cent per month should be applied in a case of early retirement;

(e) Surviving spouses should receive a pension equal to 60 per cent of a judge's pension; alternatively, judges could opt to increase a spouse's pension up to a maximum of a further 50 per cent by means of an actuarial reduction in their pension;

(f) Upon remarriage, a surviving spouse should be granted a lump sum equal to twice the amount of the spouse's current annual benefit as a final settlement (A/C.5/50/18, para. 27).

36. However, in reviewing the Secretary-General's recommendations, ACABQ, expressed its belief "that the various recommendations and options discussed in the report of the consulting actuary should have been analysed in the main text of the report of the Secretary-General. In particular, the rationale for the recommendations of the Secretary-General, as mentioned in paragraphs 27 (a) to (f) of the report, should have been explained in the main text of the report and cross-referenced to the corresponding paragraphs in the report of the consulting actuary in the annex". Therefore, the Advisory Committee recommended, and the General Assembly agreed, "that the Secretary-General re-examine the pension scheme of the members of the Court in a report that takes full account of the request of the Advisory Committee".[7]

37. As described in paragraph 35 (a) and (b) above, the Secretary-General recommended that the pensionable remuneration of a judge should be defined as being equal to half the annual salary, and that the pension should constitute the pensionable remuneration of a judge who completes a nine-year term, with a proportional reduction for a judge who has not completed a full term. A judge who is re-elected should receive 1/300th of his pension benefit for each further month of service, up to a maximum pension of two-thirds of annual salary. Those recommendations were based on the findings of the consulting actuary as set out in part II of the annex to the Secretary-General's report (A/C.5/50/18).

38. In response to the request of the General Assembly, the following analysis of the actuary is as follows:

(a) *Design of pension scheme*. In regard to the designing of the pension scheme, the consulting actuary observed that "the modern view on pension scheme design is that an acceptable scheme should provide a reasonable replacement income, after allowing for social security and personal savings, following a full career with the employer. A 'reasonable replacement income' is generally held to be an income sufficient to maintain a standard of living after retirement equivalent to that enjoyed in the immediate years prior to retirement. A 'full career' is usually defined as a career assuming entry age for a typical new entrant at the start of his or her career and continued employment until normal retirement age" (para. 2.2). Reference to the practice of certain Member States is contained in para. 2.3 of the consultant's report;

The consulting actuary also noted the unusual nature of service in the Court. First, members were elected at a relatively advanced age, the average age at entry for all cohorts being around age 60. Second, the average service was about 10 years' duration, with an average retirement age in the range of 70 to 72. He also observed that, over the last 21 years, 8 out of the 36 deceased judges, or approximately 22 per cent, had died in the course of service and therefore prior to receipt of a pension payment. Finally, the consulting actuary noted that the average duration of pension for a retired member of the ICJ was about 12 years, (paras. 2.7, 2.9 and 2.10). In view of the foregoing, the consulting actuary concluded that a full career in the service of the Court could reasonably be taken to mean two full terms, i.e., 18 years. Moreover, based solely on general principles as applied to pension scheme construction, he further concluded that the overall design of the scheme in force prior to 1 January 1991 was "not unreasonable" (para. 2.12);

(b) *Pensionable remuneration – methodology for its determination*. Based on the analysis presented and the comparative data available, the consulting actuary indicated that a soundly designed pension scheme should relate pension benefits directly to pay at or near retirement by formula rather than by fixed amount, since this provided an automatic link between pre-retirement and post-retirement income (para. 2.24). In summary, the consulting actuary recommended that the pension formula relating to the accrual rate should revert to that in effect immediately prior to 1 January 1991, subject to a review of the definition of pensionable remuneration. Such a change would make clear

the relationship between pre-retirement and post-retirement income and thus facilitate direct comparison with other schemes, as opposed to the current regime of fixed pensions which had the appearance of being arbitrary (para. 2.26);

Regarding pensionable remuneration, the consulting actuary concluded that pensionable remuneration could be defined as full annual salary or the portion of such salary that did not reflect the cost of living in The Hague (para. 2.43). In the former case, there would be less need for a local currency provision with attendant initial adjustment in pension for high-cost countries, and the principle of full retroactivity for pensioners would be maintained. In the latter case, retirees in high-cost countries would not achieve the levels of replacement income envisaged in the scheme design during periods when the United States dollar was weak; that would therefore suggest a need for a two-track pension adjustment system along the lines of that employed by the United Nations Joint Staff Pension Fund (UNJSPF). In practical terms, the choice would appear to be between simplicity with some inequity on the one hand and complexity with equity on the other hand. If the full annual salary were applied to the pension regime in force prior to 1 January 1991, simplicity would result but there would be some inequity as regards those who retire to particularly high-cost countries. If only a portion of the full annual salary were applied to pensionable remuneration with the introduction of a local currency pension adjustment system, there would be a larger degree of equity coupled with more complexity in administration. On balance, the consultant tended to favour the simple approach given the size of the group in question. It followed therefore that a return to the 1 January 1991 pension regime but with the application of the revised annual salary in force as of that date would be suitable;

(c) *Contributory participation*. On the issue of establishing a contribution requirement, the consulting actuary recommended against having the members of the Court contribute to their pensions in the light of the fact that, for the members of the Court, anticipated service was much shorter than for those participating in the UNJSPF, "which leads us to believe that meaningful cost-sharing could not occur without the members' contributions being set at inordinately high levels" (para. 2.36). In addition, in the more usual pension schemes, members' contributions were made on the expectation that they would be returned as part of the pension payments over many years of retirement. This was not the case for the members of the Court, who often served beyond the age when most employed persons retired and who had a more limited expectation of return. Moreover, those members who chose to serve longer would be treated inequitably in comparison with those who served the Court for a limited period, because they would be required to contribute over a longer period while expecting to receive pension payments over a shorter number of years. This issue did not arise in the more usual pension arrangements because the vast majority of members retired either before or at normal retirement age, with the result that the expected length of pension payments was relatively similar for all retirees. It did not seem appropriate to require contributions if the scheme was not funded;

(d) *Retirement benefits*:

(i) *Early retirement benefits*. As regards the question of early-retirement benefits, is was noted that the pension scheme provided that members of the Court retiring before age 60 might elect to receive an immediate pension of equivalent actuarial value to the pension which would have been paid at age 60. However, the actuarial basis for determining actuarial equivalence was not defined in the scheme rules. The consulting actuary expressed the view that the early retirement provisions as set forth in the scheme were reasonable and in keeping with sound, modern pension design. Therefore, the recommendation was made that actuarial reduction factors be adopted as part of the scheme rules as that would provide a readily available basis for determining early retirement pensions. As the calculations indicated that the actuarial equivalencies could be approximated very closely by a standard reduction of ½ per cent per month by which the pension commencement date preceded age 60, it was recommended that that factor be adopted as part of the scheme rules. (para. 2.28);

(ii) *Surviving spouse pension benefit*. On the issue of surviving spouse's pensions, the consulting actuary noted that pension schemes in several European countries, such as Germany and the Netherlands, commonly provided surviving spouses' pensions at the rate of 60 per cent rather than the rate of 50 per cent more commonly found in the United States and within the United States-based international organizations (para. 2.32). The consulting actuary therefore submitted that a rate of 60 per cent for surviving spouses pensions was not unreasonable and that a lump sum settlement of twice the annual pension upon the remarriage of the surviving spouse also was reasonable (para. 2.33).

V. Conclusions regarding the pension scheme for the judges of the International Court of Justice

39. Based on the analysis and findings of the consulting actuary's report, the Secretary-General believes that the pension scheme for the members of ICJ should provide adequate after-service benefits to judges having met the requisite eligibility criteria relating to retirement age and period of service based upon the premise that the pension benefit maintains a standard of living as replacement income.

40. Based on the consulting actuary's recommendations vis-à-vis the pension scheme for the members of the Court, the Secretary-General recommends that:

(a) The pensionable remuneration, or retirement pension, of a judge should be defined as being equal to half the annual salary;

(b) The pension benefit should constitute the retirement pension of a judge who completes a nine-year term, with a proportional reduction for a judge who has not completed a full term. A judge who is re-elected should receive 1/300th of his pension benefit for each further month of service, up to a maximum pension of two thirds of annual salary;

(c) The pension scheme should be non-contributory;

(d) An actuarial reduction factor at a rate of one-half of one per cent per month should be applied in a case of early retirement;

(e) Surviving spouses should receive a pension equal to 60 per cent of a judge's pension; alternatively, judges could opt to increase a spouse's pension up to a maximum of a further 50 per cent by means of an actuarial reduction in their pension;

(f) Upon remarriage, a surviving spouse should be granted a lump sum equal to twice the amount of the spouse's current annual benefit as a final settlement.

41. However, in order to avoid a disproportionate increase in pension, the Secretary-General would propose that the recommendation to base the retirement pension at half the annual salary shall be implemented in two stages: half to come into force as of 1 January 1999 and half as of 1 January 2000. Therefore, he would recommend that, with effect from 1 January 1999, the pension benefit be increased from $50,000 to $66,125 and that, effective 1 January 2000, the retirement pension be set at 50 per cent of the annual salary.

Table 5
Percentage increase in level of pension benefits

Amount of annual pension (United States dollars)		
From	*To*	*Percentage increase*
50 000	66 125	32.25
50 000	82 250	64.50
66 125	82 250	24.40

42. Should the proposals above with regard to pensions be found acceptable, the Secretary-General would propose that the Registrar of the Court amend the pension scheme regulations accordingly.

VI. Analysis of the practice of the Court with respect to Article 16, paragraph 1, of the Statute of the Court

43. In paragraph 8 of its report,[8] the Advisory Committee expressed its view that the broader review of the conditions of service of the judges should include an analysis of the practice of the Court with respect to Article 16 of the Statute of the Court. That Article provides as follows:

> "1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.
>
> "2. Any doubt on this point shall be settled by the decision of the Court."

44. In keeping with Article 16, paragraph 2, of the Statute of ICJ, the Secretary-General requested the Court to provide clarification on the matters raised by the Advisory Committee. The response of the Court was presented in paragraphs 29 to 33 of his report (A/C.5/50/18), presented to the Assembly at its fiftieth session.

45. The Advisory Committee indicated in its report[9] that, despite the analysis presented, there were still a number of questions which remained unanswered. Consequently, it recommended, and the General Assembly agreed, to invite the Court to look again at this issue in the light of the observations and concerns of the Advisory Committee.

46. In response to the comments and concerns of the Advisory Committee regarding the application of Article 16, the Court has provided clarification of its practice as follows.

The Court has interpreted the provisions of Article 16 as prohibiting judges of the Court from maintaining or exercising any political or administrative function, whether international, national, or local, whether commercial or otherwise; engaging in any other occupation of a professional nature, *inter alia*, holding a position in a commercial concern, engaging in the practice of law, maintaining membership in a law firm or rendering legal or expert opinions; or holding a permanent teaching or administrative position in a university or faculty of law.

47. Under the authority vested in the Court under Article 16, paragraph 2, ICJ has, in view of the judicial character of the activities involved, interpreted the bar to the members of the Court engaging in other occupations of a professional nature as not debarring a limited participation of judges in other judicial or quasi-judicial activities of an occasional nature, as well as scholarly pursuits in the sphere of international law as members of learned societies or as occasional lecturers. The judges accepting such occasional activities give the fullest precedence to their supervening duties as members of the Court. Based on a long-standing tradition of the Permanent Court of International Justice, founded in 1922, as well as the recorded intention of the Conference that adopted the text of Article 16 of the Statute, the Court further interpreted the Article as permitting acceptance of occasional appointments as arbitrators. In doing so, the Court referred to a similar practice existing in the courts of a number of Member States, such as France, Germany, the Netherlands, India, Canada, Australia, Sweden, Norway, Denmark, Tunisia and the Libyan Arab Jamahiriya, as well as some states of the United States of America.

48. The Court has consistently taken the position that contributions by its members to third-party settlement of disputes by legal processes in other forums, as occasional service as arbitrators, are compatible with the judges' functions as members of the Court. These activities are subject, however, to two conditions. The first is that the judges must give absolute precedence to their obligations as members of the Court. The second is that they should not accept appointment in an arbitral case, which, in another phase, is subject to being submitted to the Court.

49. As regards its practice, the possibilities of members of the Court engaging in such outside activities have varied in accordance with the intensity of the work of the Court. During times when the workload of the Court was reduced (as it was in the years 1967–1983), participation in outside activities was more feasible than when the work of the Court was as intense as it has been during the past decade. Thus at one time a judge could simultaneously sit on the Court and on the European Court of Human Rights, an arrangement which nowadays would not be conceivable.

50. At the present time, because of the Court's heavy caseload, the members of the Court have little possibility of engaging in activities other than those required by the Court. A certain number of members occasionally lecture or write articles in learned journals. Members of the Court participate in meetings of learned societies such as the Institute of International Law. These activities are largely without compensation, and the Court provides no kind of payment or travel or other expenses incidental to such activities. When on exceptional occasion a judge acts as arbitrator, the Court ensures that such service in no way detracts from the work of the Court and that the Court pays no expenditures arising out of such service.

51. In reply to questions of ACABQ as to whether the premises or resources of the Court, including staff, have been utilized for outside activities, the Court has affirmed that all judges, in accordance with guidelines circulated to them, are obligated to reimburse all telephone, facsimile and postage and other expenses relating to any of these activities. Court premises are not used for arbitral sessions; however, judges as well as Registry staff give lectures on the work of the Court to visiting groups on Court premises. Staff of the Court do not participate in arbitral activities.

52. In clarification of its practice under Article 16 of the Statute, and in response to its own concerns as well as those of ACABQ, the Court, in July 1996, adopted a new directive as follows:

> "In cases in which a member of the Court is invited to accept an arbitral commitment, membership in another tribunal, remunerated series of lectures or a contract for the publication of a book, or series of articles, he or she shall consult, before acceptance, the President of the Court, who, should the need arise, shall consult the Court; in cases where the President of the Court is invited, he or she shall, before acceptance, consult the Court. In view of the increased workload of the Court, members of the Court shall exercise restraint in accepting undertakings of this kind (whether remunerated or not)."

VII. Residence and non-residence status of the Members of the Court

53. In paragraph 6 of its report,[9] the Advisory Committee recommended that "the Secretary-General address the issue of residence and non-residence status of the members of the

Court as it impacts on their salary and other conditions of service, as well as the need to issue rules and procedures that regulate the administration of the benefits of the members of the Court".

54. Article 22, paragraph 2, of the Statute of ICJ provides that the President and the Registrar shall reside at the seat of the Court. Article 23 provides that members of the Court shall hold themselves permanently at the disposal of the Court.

55. Article 3 of the Travel and Subsistence Regulations of ICJ provides that "the President of the Court, who by virtue of Article 22 of its Statute shall reside at the seat of the Court, and any other member of the Court who takes up residence at the seat of the Court in compliance with Article 23 of the Statute, shall be entitled ... to full removal costs of household goods and personal effects to the seat of the Court from his home at the time of appointment (or any country other than that where the Court has its seat if less expenditure is entailed) [and] to an amount corresponding to the installation grant provisions applicable to senior officials of the Secretariat of the United Nations".

56. Based on the above, bona fide residence status at The Hague could be defined as being applicable to any member for whom full removal and installation have been paid under the provisions of Article 3, paragraph 1, of the Travel and Subsistence Regulations of the International Court of Justice, adopted by the General Assembly in its resolution 37/240 of 21 December 1982.

57. As regards the impact of residence or non-residence of members of the Court on conditions of service, the Secretary-General recalls that the General Assembly has conditioned the eligibility of members of the Court for education, installation and repatriation allowances on their having taken up residence in The Hague, whereas travel entitlements of non-resident and resident members are governed by General Assembly resolution 37/240.

58. As far as the effect of the status of residence or non-residence on the salary of the members of the Court, the Secretary-General notes that the annual salary is expressed in United States dollars and paid in guilders and it is not affected by residential status.

59. The Court has communicated its view on residence status as follows:

> "As a consequence of its increased workload over the last dozen years, the Court meets throughout the year, except for mid-summer and the turn of the year. The presence of the judges at the seat of the Court is accordingly required throughout the year. This situation is not going to change soon. Under these circumstances, the appropriate definition of the residence status of judges is the establishment, through acquisition or long-term lease, of a permanent residence in The Hague, coupled with the option by the judge concerned for resident status."

VIII. Financial implications

60. Should the General Assembly approve the proposals contained in paragraphs 19, 25, 30, 31, 40 and 41 above, the programme budget implications of the increase in annual salary and the changes proposed in the pension scheme for members of the International Court of Justice and costs of educating children of its members are estimated at $726,400 for the biennium 1998–1999, as reflected in Table 6 below. No changes are proposed to the other conditions of service of the members of the Court.

Table 6
Programme budget implications 1998–1999
(In United States dollars)

Salary increase (para. 19)	292 500
Increase in emoluments of ad hoc judges (para. 25)	38 500
Education grant increase (paras. 30 and 31)	4 200
Pensions (paras. 40 and 41)	391 200
Total	**726 400**

61. The estimated requirements of $38,500 for the emoluments of ad hoc judges would fall under the provisions of paragraph 1 (b) (i) of General Assembly resolution 52/223 of 22 December 1997 on unforeseen and extraordinary expenses for the biennium 1998–1999.

62. In respect of the balance of the estimated requirements, i.e. $687,900, arising from the Secretary-General's proposals, relating to an increase in the annual salary and the costs of educating children of members of the Court, and additional pension payments in respect of former judges and the widows of judges, for the 1998–1999 biennium, the requirements are seen as relating to inflation and should be treated outside the procedure related to the contingency fund, as provided for in paragraph 11 of annex I to General Assembly resolution 41/213 of 23 December 1986. In accordance with the decision of the General Assembly contained in part III, paragraph 34, of its resolution 52/220 of 22 December 1997, any resource change resulting from

decisions taken by the Assembly with regard to emoluments and other conditions of service for the members of the Court will be reported in the performance report on the programme budget for the biennium 1998–1999.

63. In accordance with their respective statutes, the terms and conditions of service of the judges of the International Tribunal for the Former Yugoslavia are those of the judges of the International Court of Justice, while the terms and conditions of service of the judges of the International Tribunal for Rwanda are those of judges of the International Tribunal for the Former Yugoslavia. In its review of the conditions of service for the judges of the two ad hoc Tribunals as contained in the report of the Secretary-General (A/52/520), the General Assembly, upon the recommendation of ACABQ, agreed in its resolutions 52/217 and 52/218 of 22 December 1998, respectively, to defer the consideration of the pension entitlement for members of the two Tribunals until the review of the report of the Secretary-General on the emoluments and pension scheme of members of the International Court of Justice to be submitted to the General Assembly at its fifty-third session.

64. Should the General Assembly approve the proposals contained in paragraphs 19, 25, 30, 31, 40 and 41 of the present report, the financial implications for the proposed resource requirements for 1999 for the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda to be submitted to the General Assembly at its fifty-third session will be as follows:

Table 7

	Former Yugoslavia Tribunal	*Rwanda Tribunal*
	(In United States dollars)	
Emoluments – salary increase	273 000	175 500
Relocation allowance	—	9 000
Pensions	49 600	8 800
Total	**322 600**	**193 300**

IX. Next comprehensive review

65. By its resolution 48/252 A, the General Assembly decided that the periodicity of review of the conditions of service of the members of ICJ should be determined at the fiftieth session of the Assembly.

66. By its resolution 50/216 of 23 December 1995, the General Assembly, decided that the next comprehensive review of the conditions of service of the judges would take place at its fifty-third session. Should the General Assembly decide to continue the three-year review cycle, the next comprehensive review by the Assembly would be undertaken at its fifty-sixth session in 2001.

Notes

[1] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 7A* (A/50/7/Add.1-16), document A/50/7/Add.11, para. 14.

[2] Ibid., *Forty-eighth Session, Supplement No. 7A* (A/48/7/Add.1-17), document A/48/7/Add.6, para. 4.

[3] Ibid., *Fiftieth Session, Supplement No. 7A* (A/50/7/Add.1-16), document A/50/7/Add.11.

[4] Ibid., *Fifty-first Session, Supplement No. 30*, (A/51/30), para. 230 (a)-(f).

[5] Ibid., *Forty-eighth Session, Supplement No. 7A* (A/48/7/Add.1-17), document A/48/7/Add.6, para. 7.

[6] Ibid., *Forty-ninth Session, Supplement No. 7* (A/49/7 and Add.1-14), document A/49/7/Add.11, paras. 6–8.

[7] Ibid., *Fiftieth Session, Supplement No. 7A* (A/50/7/Add.1-16), document A/50/7/Add.11, paras. 12 and 14.

[8] Ibid., *Forty-ninth Session, Supplement No. 7* (A/49/7 and Add.1-14), document A/49/7/Add.11.

[9] Ibid., *Fiftieth Session, Supplement No. 7A* (A/50/7/Add.1-16), document A/50/7/Add.11.